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**STAFF REPORT: REGULAR CALENDAR
COASTAL DEVELOPMENT PERMIT**

APPLICATION NO.: A-3-SLO-98-108, TRACT 1646

APPLICANT: Noel Rodman and Ron Holland

PROJECT DESCRIPTION: Extension of the coastal development permit for Tract 1646 for a period of five years; revisions to conditions imposed on the original permit relative to the provision of sewer and water to the 100-lot subdivision at the time the final map is presented for filing.

PROJECT LOCATION: Northerly side of Los Osos Valley Road, (19 acre site between Pecho Road and Monarch Lane), Los Osos, San Luis Obispo County.

LOCAL APPROVALS: Board of Supervisors Resolution to grant a five-year extension for the Tentative Map and coastal development permit for Tract 1646 and Board Minutes of August 25 and September 22, 1998 documenting the action to amend conditions attached to the original project.

FILE DOCUMENTS: San Luis Obispo Certified LCP, San Luis Obispo Board Resolution No. 98-336, Minutes of the Board of Supervisors hearing on the project on September 22 and August 25, 1998, Coastal Commission Appeal File A-4-SLO-91-2, San Luis Obispo County file on Tract 1031 and Tract 1646. Database entry items for San Luis Obispo and San Mateo County Notices of Final Local Action on Coastal development permits, Monterey County Certified LCP, Title 20, County Zoning Code, and Los Osos Sewer Appeal, A-3-SLO-97-40.

PROCEDURAL NOTE

On March 11, 1999, the Coastal Commission determined that an appeal of the San Luis Obispo Board of Supervisors action to extend and amend the tentative map/coastal development permit for Tract 1646 raised a substantial issue with respect to the action's conformance with the County's certified Local Coastal Program. When the applicant objected at the March 11, 1999 hearing that the Commission had no jurisdiction under Public Resources Code section 30603, the Commission indicated that it would consider the applicant's jurisdictional argument at the time of the de novo hearing. On August 25, 1999 the superior court of San Luis Obispo County directed the Commission to consider the applicant's jurisdictional argument prior to its de novo review of the applicant's project. Accordingly, the Commission should review and decide the applicant's jurisdictional argument before commencing its de novo review required by section 13115(b) of Title 14 of the California Code of Regulations.

SUMMARY OF STAFF RECOMMENDATION

Jurisdiction. The Commission has jurisdiction over this appeal under Public Resources Code section 30603. Section 30603 provides that the Commission has jurisdiction over "an action taken by a local government on a coastal development permit application" that fits into one of the categories enumerated in section 30603. The County's decision to extend the permit and amend permit conditions constitute "an action" under section 30603. Further, the Commission has jurisdiction over the County's action under subsection (a)(4) of section 30603 because the County's action involves a development (i.e., a subdivision) that is not listed as a principal permitted use in the County's LCP.

De Novo Review. The County of San Luis Obispo extended and amended a coastal development permit for a 100-lot subdivision in the community of Los Osos. Staff recommends that the Commission DENY the extension and the proposed amendments of the Coastal development permit on the grounds that they are inconsistent with the San Luis Obispo Certified LCP. First, the County procedures for considering an extension include an inquiry into whether there are any changed circumstances that would affect the project's consistency with the LCP. In this case, there are significant changed circumstances since the CDP was approved in 1990 that bring into question the project's compliance with the certified LCP. Most significant, the Morro Shoulderband Snail has been listed by the U.S. Fish and Wildlife Service as an endangered species. The County, in the Draft Estero Area Plan Update, has identified the project site as suitable habitat for the endangered snail. Thus, portions of the project site are most likely environmentally sensitive habitat. Under the LCP, land divisions cannot be approved in environmentally sensitive habitat. Moreover, even if the permit could be extended, the LCP only allows a maximum three-year extension of a CDP. The County extended the CDP for five years.

Second, the amendments to the conditions regarding sewer facilities and demonstration of water supply at the time the final map is presented for filing are inconsistent with LCP Public Works Policy 1. This policy requires that new development demonstrate "there are sufficient services to serve the proposed development given the outstanding commitment to existing lots within the urban

service for which services will be needed consistent with the Resource Management System where applicable.”

The conditions attached to the original approval of the project ensured that this policy would be met by requiring that a community waste water treatment facility serving all of Los Osos would be completed and available to accommodate the new development before the final map could be filed. Likewise, the original conditions required that the applicant demonstrate that there would be an adequate supply of water to serve the new lots at the time that the final map was presented for filing. The amendments to the project approved by the County do not provide any assurance that LCP Public Works Policy 1 will be met because they allow the applicant to construct sewer facilities for his site only and to rely on an outdated “will serve” letter from 1988 as evidence of an adequate water supply. Findings on sewer and water constraints in Los Osos and the LCP Policy requirements as they relate to this project detail the inconsistencies presented by the recent approval of these amendments.

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I. STAFF RECOMMENDATION

A. APPELLATE JURISDICTION

Staff recommends that the Commission adopt the following resolution in support of its appellate jurisdiction to review the County's action on the request to extend and amend the permit.

Motion on the jurisdictional question:

I move that the Commission find that it has jurisdiction of this appeal under Public Resources Code section 30603 and that it adopt findings to support its jurisdiction that are set forth in the staff report.

Staff recommends a **YES** vote on the motion. The effect of a yes vote on the motion will be to adopt the following resolution and to proceed to a de novo review. A majority of the Commissioners present is required to approve the motion.

Resolution:

The Commission hereby finds that it has jurisdiction of this appeal under Public Resources Code section 30603(a)(4) and adopts findings to support its jurisdiction that are set forth in the staff report.

B. EXTENSION OF THE COASTAL PERMIT FOR TRACT 1646

Staff recommends that the Commission adopt the following resolution for denial of the extension of the coastal development permit for Tract 1646:

Motion on the extension of the coastal development permit:

I move that the Commission approve a three-year extension of the coastal development permit for Tract 1646.

Staff recommends a **NO** vote on the motion. The effect of a no vote on the motion will be to adopt the following resolution and to deny the extension of the permit. A majority of the Commissioners present is required to approve the motion.

Resolution:

The Commission hereby denies the extension of coastal development permit A-3-SLO-98-108, for Tract 1646 on the ground that the extension is inconsistent with the San Luis Obispo Certified Local Coastal Program.

C. AMENDMENTS TO TRACT 1646

Staff recommends that the Commission adopt the following resolution for denial of the amendments to the coastal development permit for Tract 1646.

Motion on the proposed amendments to the coastal development permit:

I move that the Commission approve the proposed amendments to Conditions One and Two to Coastal development permit Number A-3-SLO-98-108 for the Holland Subdivision, Tract 1646 project as approved by the County of San Luis Obispo.

Staff recommends a **NO** vote on the motion. The effect of a no vote will be to adopt the following resolution and to retain Conditions One and Two as originally described in the 1990 approval of the project. A majority of the Commissioners present is required to pass the motion.

Resolution:

The Commission hereby denies the proposed amendments to Conditions One and Two to Coastal Development Permit A-3-SLO-98-108, on the ground that the amendments are inconsistent with the San Luis Obispo Certified Local Coastal Program. Approval of the amendments would not comply with the California Environmental Quality Act because there are feasible mitigation measures or alternatives that would substantially lessen the significant adverse impacts of the proposed revisions on the environment.

II. FINDINGS AND DECLARATIONS

A. PROJECT DESCRIPTION, HISTORY OF LOCAL AND COASTAL COMMISSION ACTIONS

The project amended by the County in their September 22, 1998 action is a 100-lot subdivision of three parcels (APN 74-430-01,16 and 74-022-22) totaling 19.4 acres. The proposed lots range in size from 6,000 square feet to 11,600 square feet. Various subdivision improvements (roads, utilities and limited grading) are also part of the approved project. The project does not include the construction of any homes on the parcels and it is unknown if the developer will sell the lots to individuals or seek permits to construct homes himself after the final map for the subdivision is filed. The final map cannot be filed until a number of conditions attached to approval of the tentative map have been satisfied.

1. Site Information

The site is in Los Osos-Baywood Park, an unincorporated area of San Luis Obispo County located along the lower reaches of Morro Bay that is partly developed with residential uses. (Please see Exhibit 1, Location Map.) Land uses surrounding the site include residential uses on lots of varying

size to the east, west and south. The Sea Pines Golf Course is nearby to the northwest. Vacant land lies between the site and Morro Bay, some 1,500 feet to the north. (Please see Exhibit 2, Land Use Map.) The three parcels that make up the site are zoned for single family residential use. The Certified LCP allows minimum parcel sizes of 6,000 square feet for this site if consistent with other plan policies. Currently the nearly flat site contains an older residence and a couple of outbuildings. Recent site inspections also revealed the presence of a golf driving range on the westerly half of the site, although the history of this development is as yet unclear.

Constraints on the site include its location within the “Prohibition Area” designated by the Regional Water Quality Control Board to prohibit the addition of any more septic systems into the area. A permit for a sewer plant to serve this area is currently under consideration by the Commission (Los Osos Wastewater Treatment Project, A-3-SLO-97-40). A Community Service District has been recently formed to carry through on development of a sewer project which will alleviate the impacts of the current method of sewage disposal and allow additional infill development in Los Osos.

2. History of the Project

This project has a very lengthy history that began several years before the San Luis Obispo LCP was certified. The present project was finally approved by operation of law on January 5, 1991 even though it was the subject of a hearing and action before the Subdivision Review Board in November and a hearing before the Board of Supervisors in December 1990. At the December 1990 hearing, the Board agreed not to act on the project, which had been recommended for denial by the Subdivision Review Board, if the applicant would revise the project description to include various “project features” that addressed particular concerns of the Board. These “features” became what are now referred to as project conditions. A history of this project follows.

Tract 1091: Tract 1091 was the predecessor project to Tract 1646, which is the subject of this appeal. It is important to understand the history of Tract 1091 because the applicant’s position is that Tract 1646 is an identical project.

Tract 1091 was submitted for county review in 1983 and proposed subdividing the 19.4 acre parcel into 76, 6,000 square foot lots for 38 duplexes and one 4.4 acre parcel to be developed as a small shopping center. Wastewater treatment was to be provided by an on-site “package plant.” In November 1983, a Draft EIR was released for this project and noted that “the proposed method of effluent disposal will have significant deleterious effects on local ground water.” In their response to the DEIR, the Regional Water Quality Control Board noted a number of concerns with the proposed wastewater treatment system and concluded “that seepage pits as designed may pose a health hazard.”

After the DEIR was released, the project was revised to replace the commercial development and the duplex lots with a 100-lot subdivision for single family home development. Staff has not discovered any addendum or supplement to the 1983 DEIR that addresses the revised project. The 1983 DEIR did, however, include a brief discussion of use of the site for 57 single-family lots in the section on alternatives to the proposed project. The DEIR noted that this less intensive use of the site would have fewer impacts than the 76 duplex lot and commercial subdivision proposed by the applicant.

Tract 1091 was approved by the county in December 1985 as a 100-lot subdivision which would be served by an on-site wastewater “package plant” and would be provided water by the local water company. The applicant submitted the project to the Coastal Commission for review as the San Luis Obispo County LCP was not yet fully certified. Commission staff prepared a recommendation for denial of the subdivision citing wastewater treatment and potable water service as major issues. The applicant withdrew the application before the Commission could act on it. At the same time, the applicant was attempting to get Regional Board and County Health Department approval for a wastewater treatment system to serve the subdivision. By mid-1987, approval had still not been obtained, and the Regional Board stated that it could not prepare the wastewater discharge requirements until the applicant demonstrated that “the development is legally limited to 42 dwelling units” and that a public district had been formed to run the plant.

The record for Tract 1091 seems to end in mid-1987; however, a county staff report, prepared in November 1990 for Tract 1646, stated that the tentative map for Tract 1091 was still valid pursuant to Government Code Section 66452.6 (development moratorium).

Tract 1646: On March 31 1988, San Luis Obispo County assumed the authority to issue local CDPs under their now fully certified LCP. In September 1988, the applicant submitted an application for a vesting tentative map and a CDP for Tract 1646, a 100-lot subdivision substantially the same as Tract 1091. The application states that the project will rely on a community system for wastewater disposal and for water service. The proposed subdivision map, prepared by Westland Engineering, dated March 1989, shows a “package plant” on lot 95. An undated revision to this map shows 16 seepage pits/septic system on lots 45 and 46. It can thus be surmised that the applicant’s interpretation of “community system” for waste water disposal did not encompass any greater area than their 19 acres. The County accepted the application for processing on June 25, 1989.

The record reflects that the County staff believed that circumstances in the Baywood Park- Los Osos area had changed since the EIR for Tract 1091 had been prepared and that a supplement to that EIR was required to address wastewater, water and traffic concerns. The applicant balked at this requirement and instead offered to submit additional information on these issues, particularly traffic. Activity on processing the application slowed pending receipt of the desired information and it appears the project languished for over a year. The traffic information, promised by the applicant , was finally received in November 1990, after notice by the project proponents that they would seek approval of the map and CDP by operation of law. Information regarding water and wastewater disposal was never received and a supplement to the old EIR was never prepared.

On November 5,1990, the applicant provided the county with the appropriate notice under the Permit Streamlining Act (PSA) that Tract 1646 would be approved by operation of law unless the County acted on the proposal within 60 days (i.e, by January 4, 1991). The County prepared a staff report, recommending denial based on various inconsistencies with County planning and zoning standards and because the significant impacts of sewage disposal, traffic and water supply were unmitigated. The item was heard by the Subdivision Review Board at their November 30, 1990 meeting and was unanimously denied. The Subdivision Committee then referred the item to the Board of Supervisors with its recommendation that the Board deny it as well. The project was set for hearing before the Board of Supervisors on December 11, 1990.

Project Revisions: During the period between the filing of the PSA notice and the Board of Supervisors hearing, the applicant made a number of changes to the project in an attempt to avoid denial of the tentative map and coastal development permit. These revisions are documented in the following paragraphs:

- **Letter, November 30, 1990, John Belsher to Terry Wahler:** This letter was from John Belsher, the applicant's legal representative to Terry Wahler, the planner handling the item for the County. In the letter, Mr. Belsher refers to an earlier conversation with Mr. Wahler regarding "clarifications" to features of the project. The letter then goes on to memorialize these "clarifications." Of most interest to the Commission are those which deal with sewer and water infrastructure. Regarding sewage disposal, Mr. Belsher clarifies that although the tract map shows certain lots "as set aside as sewage disposal pits . . . by this letter, the project contains only such sewer system as may be approved by the Regional Water Quality Control Board Accordingly, there is no need for designation of sewage disposal pits and the designations should be dropped from the map." Regarding the water service issue, Mr. Belsher states, "The applicant also agrees to abide by County requirements for water supply in effect at the time approval of the final map is sought."

Mr. Belsher also attached draft recommended Findings and Conditions to this letter for the County's use. His suggested Condition 1 states "This project shall connect to a sewer system approved by the RWQCB for the State of California, such that the present RWQCB moratorium on new construction is lifted." Suggested Condition 2 states "The applicant will be required to demonstrate an adequate water supply consistent with the County policy in effect at the time the final map is filed."

- **Letter, November 30, 1990, John Belsher to Terry Wahler:** The contents of this letter are virtually identical to that of November 27, 1990 discussed above. In this letter, Mr. Belsher, wants the county to understand the exact status of the "clarifications" and proposed conditions contained in the November 27, 1990 letter. He therefore states "The following clarifications [described in the Nov. 27 letter] are intended to be incorporated into the project, in addition to having independent status as conditions. This approach is intended to address the concern that certain conditions may not be imposed as part of a vesting tentative map approval." The letter goes on to repeat the various clarifications and proposed conditions.
- **Letter, December 7, 1990, John Belsher to Evelyn Delany, Chair, and Members of the Board of Supervisors:** In this letter to the Board, Mr. Belsher explains that the "applicant has offered clarifications to his project and conditions to final map approval which alleviate central concerns expressed in the staff report". He goes on to say that these clarifications and conditions are set forth in his November 30, 1990 letter to Terry Wahler, a copy of which "is supposed to appear in your packets."
- **Letter, December 3, 1990, John Belsher to Nancy French:** This letter, to a Deputy County Counsel, was written in response to the concern that the County could not approve the project as modified by the applicant in the recent letters to Terry Wahler because of perceived inconsistencies with Map Act provisions regarding vesting tentative maps. Mr.

Belsher notes that the County seems particularly concerned with the modifications relevant to sewage disposal, traffic and water supply. As a preface to this lengthy letter, he states “The purpose of this letter is to demonstrate the legal authority of the Board to approve the application with said Modifications. Moreover, this letter will demonstrate that even if the project is approved by operation of law, the applicant will be bound by the Modifications.”

- **SRB Meeting:** The Subdivision Review Board met on November 30, 1990 to hear the project and make a recommendation to the Board of Supervisors on it. The minutes of that meeting state that Mr. Belsher “submits a letter dated November 30, 1990 that contains modifications and conditions and would like the statement to reflect the changes in the project”. Staff suggested that the applicant was proposing a revised project “since the applicant . . . desires to pursue hooking up to a community sewer system approved by the Regional Water Quality Control Board instead of the seepage pits shown on the map.” At the conclusion of the hearing, the SRB voted 4-0 to deny the project.
- **1990 Board of Supervisors Hearing:** The project was then scheduled for a hearing before the Board of Supervisors. The staff report prepared for the SRB hearing was provided to the Board along with the SRB recommendation that the project be denied. This staff report, dated November 14, 1990, was prepared before the applicant offered his modifications and conditions to the project and thus it does not discuss the revisions. The report was up-dated by a cover letter to the Board that stated that “the applicant’s representative has indicated a desire to propose a substantially different method of waste water disposal.” A copy of John Belsher’s letter laying out the various revisions was also provided to the Board.

The staff report was presented and a number of representatives from County agencies and members of the public spoke in support of the recommendation. Major issues were wastewater disposal, water service, traffic and the need for supplemental CEQA information to address these and other issues. The applicant’s team, including his legal advisor, Mr. Belsher, presented the revisions to the project outlined in his November 30, 1990 letter to Terry Wahler and asked that the Board accept these “clarifications.” After hearing from opponents and proponents, Supervisor Coy made a motion that Tract 1646 be “deemed approved” and that the applicant voluntarily incorporate a somewhat revised version of the “clarifications” or “proposed conditions” offered by Mr. Belsher in his November 30, 1990 letter. County Counsel advised that, before the Board acted, the revisions should be memorialized in writing. The item was then trailed to allow this to be accomplished. Later in the day, the hearing on Tract 1646 was resumed. Mr. Belsher brought back a document reflecting the Board’s suggestions for revisions to the “clarifications” and “proposed conditions” outlined in the November 30th letter. Mr. Belsher proposed that the conditions of approval be retitled as “Additional Project Description.” The Board then voted to recognize the project description as described by the applicant. In a subsequent vote, the Board voted to take no further action on the item. The project was approved by operation of law 25 days later on January 5, 1991, the termination of the 60 day notice period outlined in the Permit Streamlining Act. Relevant documents related to this action include the minutes of the December 11, 1990 Board meeting and the final revised “project description” containing 31 modifications submitted at that hearing. (Please see Exhibit 6.)

1991 Commission Appeal: The project was appealed to the Coastal Commission on January 11, 1991 by local appellants. The Commission did not appeal the item separately. A staff report was prepared recommending denial and was distributed to interested parties. One week before the item was scheduled for hearing by the Commission, the local appellants withdrew their appeal and the approval by operation of law stood. The County considers that the Tentative Map and CDP became effective on June 14, 1991 (the date the withdrawal of the appeal was apparently reported to the Commission).

1993 Extension of Tract 1646: On September 1, 1992, the applicant's representative wrote to the County requesting that the County concur with his opinion that provisions in the Subdivision Map Act provided for an automatic extension of up to five years for his map and CDP because there was a development moratorium in effect in Los Osos. (Government Code Section 66452.6(b)(1)). In the body of the letter, the applicant's representatives reiterated that Tract 1646 was bound by the conditions of approval to connect to a sewer system to be approved by the RWQCB. (Letter to Alex Hinds from Carol Florence.) In his November 2, 1991 response to Ms. Florence's letter, Mr. Hinds stated that the County position was that the cited section of the Map Act was not applicable to Tract 1646 because it extended only to those maps that were approved before a moratorium was established. The RWQCB moratorium was established on January 8, 1988, long before an application for Tract 1646 was submitted for county review and three years before Tract 1646 was approved. The letter went on to advise the applicant to apply for a time extension under County ordinance and noted that such an extension request could trigger the need for additional environmental work to comply with CEQA. The applicant (Jerry Holland to Alex Hinds, November 16, 1992) responded with a request for an appeal of the Planning Director's decision on the five-year automatic extension, and a promise to work on an EIR update for the project. Mr. Holland also implied that an application for an extension under County ordinances, as suggested in Mr. Hinds' letter, might be forthcoming. On December 18, 1992, this request for an extension was made for both Tract 1091 and Tract 1646. (Letter, Terence Orton to Pat Beck, SLO Planner.)

The initial hearing on the appeal of the Planning Director's determination was set for January 26, 1993. A staff report was prepared recommending denial of the appeal based on a detailed analysis of the pertinent Map Act sections. Finding #1 of this 1993 County staff report states that "connection to a community-wide system was included as part of the project description provided by the applicant." The hearing was continued to February 9, 1993, largely due to receipt of a lengthy analysis of the applicability of the Map Act provisions for extension prepared by the applicant's legal representative, Roger Lyon. This analysis concluded that the five-year extension was applicable to Tract 1646, not because of the RWQCB moratorium but because the County had failed to issue the bonds needed to fund the community sewer plant. This failure prevented recordation of the final map thus triggering the provisions of Government Code 66452.6(f) that allow for a five-year extension.

The Board considered the appeal again on February 9, 1993. The staff recommendation was revised to recommend approval based on Mr. Lyon's January 25th letter. In order to make the required CEQA Finding, the Board concluded that the 1984 EIR prepared for Tract 1091 was adequate to support the 1990 approval by law. The Finding identifying the project described it as a tract map/coastal development permit that included the conditions submitted in December 1990. Finding #18 advised the applicant that "If in the future, the project requires further discretionary action, the

project shall comply with all applicable laws, including the laws pertaining to further environmental review in effect at the time of the discretionary action.” The approval extended Tract 1646/CDP until June 13, 1996 (unless sewer bonds were sold before that date, which they weren’t). The findings then noted that the day after the development moratorium ends, the two-year period of time normally granted as part of Map/CDP approval will begin. Thus the project was valid through at least June 13, 1998.

1998 Extension and Amendment of Tract 1646: In November 1997, Ron Holland, the current applicant, requested a five-year time extension for Tract 1091/1646. (Letter, Ron Holland to Pat Beck.) At some point during this period, the applicant also requested a staff “interpretation” of some of the project conditions attached to the 1990 permit relevant to sewage disposal, water service and other issues. The Planning Commission heard the extension request and gave the applicant a three-year extension. The Planning Commission also upheld the staff interpretation of the project conditions that required the applicant to comply with water policies in effect at the time the final map was presented for recording and precluded recording of the final map until community-wide sewage treatment facilities were available for connections. Both of these Planning Commission decisions were appealed to the Board of Supervisors by the applicant.

A staff report was prepared for the August 25, 1998 Board hearing on the appeal of the staff interpretation of five project features and the extension of the tentative map and the CDP. (Please see Exhibit 3.) The Board held a hearing on the appeals on August 25, 1998 and, by a series of “tentative” motions, directed staff to return with language generally supportive of the applicant’s request. The hearing was continued to September 22, 1998 at which time the Board affirmed its earlier decision to approve a five-year extension and most of the applicant’s “interpretations” of project features.

Local residents and two Commissioners have appealed the Board’s decision to grant the five-year extension and to allow amendments to the permit conditions.

B. THE COMMISSION’S APPELLATE JURISDICTION

On March 11, 1999 the Commission determined that the County’s action on Tract 1646 raised a substantial issue regarding conformity with the Certified San Luis Obispo LCP. It deferred consideration of the applicant’s challenge to the Commission’s jurisdiction under PRC section 30603 until the de novo hearing. The applicant has since filed suit, challenging the Commission’s jurisdiction over this appeal. At a hearing on August 25, 1999 the San Luis Obispo County superior court did not address the applicant’s argument that the Commission lacked jurisdiction under PRC section 30603. Instead, the Court directed the Commission to address the matter of its jurisdiction under section 30603 before conducting its de novo review of the project. The Commission now addresses the jurisdictional issues under section 30603.

Jurisdiction Under Public Resources Code Section 30603

The staff report for the March 11, 1999 meeting contained proposed findings that were prepared in the event the Coastal Commission wanted to vote on the substantial issue question. The proposed findings were not adopted because the Commission did not formally vote on the issue. The Coastal

Act, in section 30625(b)(2), does not require a formal hearing and vote on the question of substantial issue. Indeed the statute says that the Commission “shall hear an appeal unless it determines that no substantial issue exists”. Thus, the statute favors appeals. Once a matter within the Commission's appellate jurisdiction has been appealed to the Commission, the Commission must hear the matter de novo unless the Commission affirmatively finds that the matter does not raise a substantial issue and declines to hear the appeal.

The Commission's consideration of an appeal is conducted in the following manner. It is the practice of the Chairperson to inquire if any commissioners would like to discuss whether the appeal presents a substantial issue. If fewer than three commissioners raise a substantial issue question, the Commission proceeds to a hearing on the merits of the appeal without a formal hearing and vote on the substantial issue question. Any findings needed to support the Commission's appellate jurisdiction are then included in the findings on the merits of the Commission's de novo permit action.

Challenges to the Commission's jurisdiction under section 30603 are unusual and the Commission's regulations do not address when the Commission must address such a jurisdictional challenge. When the applicant at the March 11, 1999 hearing raised the question whether the Commission had jurisdiction under section 30603, the Commission deferred consideration of the applicant's argument until the de novo hearing. Consequently, even had the superior court not issued its order, the Commission would have considered the applicant's jurisdictional challenge before undertaking its de novo review of the matter under appeal.

Section 30603 provides in pertinent part:

(a) After certification of its local coastal program, an action taken by a local government on a coastal development permit application may be appealed to the commission for only the following types of developments:

(1) Developments approved by the local government between the sea and the first public road paralleling the sea or within 300 feet of the inland extent of any beach or of the mean high tideline of the sea where there is no beach, whichever is the greater distance.

(2) Developments approved by the local government not included within paragraph (1) that are located on tidelands, submerged lands, public trust lands, within 100 feet of any wetland, estuary, or stream, or within 300 feet of the top of the seaward face of any coastal bluff.

(3) Developments approved by the local government not included within paragraph (1) or (2) that are located in a sensitive coastal resource area.

(4) Any development approved by a coastal county that is not designated as the principal permitted use under the zoning ordinance or zoning district map approved pursuant to Chapter 6 (commencing with Section 30500).

(5) Any development which constitutes a major public works project or a major energy facility.

In this case, the issue of the Commission's jurisdiction raises two questions: (1) Is the decision of a local government to amend or extend a permit an appealable action under section 30603 and (2) if

so, does the County's action to extend and amend the applicant's coastal permit for a subdivision fall within one of the categories of appealable development contained in section 30603? (i.e. are subdivisions appealable?)

The Decision of a Local Government To Amend or Extend a Permit Is An Action of Local Government That May Be Appealed Under Section 30603. At the court hearing on August 25, 1999, the trial court raised an issue that the applicant had not raised before the Commission--whether the extension or amendment of a permit is the type of local government action that may be appealed under section 30603. The language, administrative practice and policy supporting the Coastal Act require that this question be answered in the affirmative.

First, the language of section 30603 includes the decision of a local government to amend or extend a permit. Section 30603 refers broadly to "an action taken by a local government on a coastal development permit application." A decision taken by a local government in response to an application to amend or extend a coastal development permit therefore readily meets the definition of "an action taken" by a local government (see also, LCP Ordinance 23.01.043(c) which also provides broadly for appeal of "decisions by the County on a permit application . . .").

Second, the Commission's longstanding administrative practice has treated appeals from decisions of local government to amend coastal development permits as appealable under section 30603. Examples of such appeals include A-3-MCO-98-109 (Leslie) and A-3-SCO-90-101 (City of Watsonville). This appears to be the first time that a local government decision to extend a permit has been appealed to the Commission, so there is no similar administrative practice with regard to permit extensions.

Third, there are strong policy considerations to support the Commission's conclusion that permit amendments or extensions are appealable, because any other construction of section 30603 would defeat the intent of the Coastal Act to secure Commission oversight of certain types of development. For example, assume that a County approved a CDP on the condition that the applicant mitigate project impacts by creating wetland habitat. Further assume that this action was therefore consistent with the LCP, and that therefore no appeal to the Commission was filed. Later, the County approved an amendment to the CDP deleting the mitigation program. If the Commission had no appeal jurisdiction over local government decisions to amend a permit, a local government could defeat the purpose of the LCP policies and implementing ordinances by simply approving an amendment to delete the condition originally needed for LCP consistency and consequently avoid an appeal. Similar reasons support appellate review of local government decisions to extend a permit in a situation where changed circumstances demand a reexamination of whether a previously issued permit still meets the policies of the LCP.

The Commission therefore finds that its decisions of local government to amend or extend a permit are within the scope of section 30603.

The Commission has appellate jurisdiction under section 30603(a)(4). The staff report for the March 11, 1999 hearing stated that the project was appealable for two reasons : (1) under Public Resources Code Section 30603(a)(1) because the site was located between the first public road and the sea and (2) under Section 30603(a)(4) because the project being extended and amended (a 100-

lot subdivision) was not listed as the principal permitted use for the zone district in which it is located.

The applicant and the County have submitted letters and graphics in support of their argument that the project site is no longer located between the first public road and the sea. (Please see Exhibits 7 and 8.) Commission staff has carefully reviewed these materials and determined that the adopted post-certification map for the project site is in error. Due to new road construction of Skyline Drive, the Holland site land is no longer within the geographic appeal area described in PRC Section 30603(A)(1). In 1991, Skyline Drive, pursuant to a valid CDP, was improved and accepted into the county road system. The geographic appeal area based on section 30603(a)(1) is now as shown on Exhibit 9 for the land in the immediate vicinity of the Holland parcel.

The County's action is appealable, however, under PRC Section 30603(a)(4). This subsection confers appellate jurisdiction over an action taken by a local government regarding:

(4) Any development approved by a coastal county that is not designated as the principal permitted use under the zoning ordinance or the zoning district map approved pursuant to Chapter 6 (commencing with Section 30500).

The land use activity that is the subject of the County's action is a subdivision. A subdivision is "development" according to the definition of development found in Section 30106 of the Coastal Act. The question of whether a subdivision is the principal permitted use in a particular LCP is determined by the specific provisions in that LCP that define the LCP's principal permitted uses. Section 23.01.043(c)(4) of Title 23, Coastal Land Use Ordinance of the Certified San Luis Obispo LCP provides the regulations for the appeal of locally issued coastal development permits to the Coastal Commission. This section directly addresses the issue of appeals based on PRC Section 30603 (a) (4) by stating that "any approved development not listed in Coastal Table "O", Part I of the Land Use Element as a Principal Permitted (PP) Use" may be appealed to the Coastal Commission. (Emphasis added; Please see Exhibit 10, Table "O.")

Turning to Table "O", single family homes are listed as the principal permitted use for this site. The listing on Table "O" which describes the principal permitted and conditional uses allowed in this zone district does not include subdivisions of land as a principal permitted use. This matter is therefore within the Commission's appellate jurisdiction because it involves an action taken by a local government regarding a subdivision, which is development that has been approved by a County that is not listed as the principal permitted use in the County's LCP.

To attempt to "bootstrap" the initial subdivision of land, even if it is for ultimate residential use, into the category of a principal permitted use is an impermissible extension of the plain language of Table "O" and with PRC Section 30603(a) (4) which specifically provides for the appeal of all development that is not the principal permitted use in coastal counties, but not in cities. It is noteworthy that the statute extends greater appeal authority over coastal development permits issued by counties. The simple reason for this heightened level of oversight is because county coastal zones are much more likely to be rural or only partially developed in urban uses. Thus, in the counties, there are also more intact coastal natural resources to consider and, often, as the case here, less or inadequate infrastructure to support new development. Consistent with this policy to ensure a

greater level of oversight over development which can significantly affect resources, it is not surprising that subdivisions are not listed as the principal permitted use on Table “O” because of the impacts on coastal resources that may attend their creation.

A review of the Final Local Action Notices from 1988 and 1992 to the present for San Luis Obispo County reveals that all subdivisions, including this one, have been identified as appealable to the Coastal Commission by the County. Staff has also researched how subdivisions are handled in Mendocino, Monterey and San Mateo Counties for the purposes of PRC Section 30603(a)(4). The certified Implementation Plan for Mendocino County specifically states that “any approved division of land” is appealable to the Coastal Commission (Section 20.544.020B(3), County Zoning Code). In San Mateo County, all subdivisions have been treated as appealable. In Monterey County, they are also all appealable and listed specifically as “conditional” uses in each of the zone districts included in the LCP. (Title 20, Monterey County Code, Sections 20.10.050 Y, 20.12. 050 X, 20.14. 050 AA, 20.16.050 LL, 20.17.050 II, 20.18.060 NN, 20.21.060 D, 20.22.060 Y, 20.24.060 GG, 20.26.060 LL, 20.28.060 LL, 20.30.060 BB, 20.32.060 FF, 20.36.060 H, 20.38.060 I and 20.40.060 F.)

The Commission finds that it has jurisdiction under section 30603(a)(4) because the County’s action involved a development that is not listed as one of the principal permitted uses in the County’s LCP.

2. Substantial Issue

Finally, the appeal raises substantial issues regarding the consistency of the County action with a number of LCP procedures and policies including the length and propriety of extending the coastal development permit for the subdivision and the consistency of the amendments with Public Works Policy 1. The Commission’s findings, set forth below, explain how the county action conflicted with these important LCP policies and procedures and demonstrate the need for Commission review.

3. Conclusion

Based on the preceding discussions of Public Resources Code 30603 and the fact that substantial issues are raised concerning the project’s consistency with the LCP, the Commission finds that it has appellate jurisdiction over the applicant’s request to extend and amend his CDP for the subdivision.

C. COASTAL DEVELOPMENT PERMIT EXTENSION

As discussed, the San Luis Obispo County Board of Supervisors both extended and amended the coastal development permit for the Holland subdivision. Because the County action on the Holland subdivision CDP is now before the Commission in a de novo review, the Commission must address the appropriateness of both the CDP extension and the amendments.

1. The County's LCP allows only a three-year extension of a CDP for a tentative map.

LCP Requirements

As specified in Title 23 of the certified LCP, Title 21 of the San Luis Obispo County Code contains the "specific procedures and requirements for the land division process, *including compliance with coastal development permit requirements* [emphasis added]." (23.01.030(c)). Section 21.01.010 states that one purpose of Title 21 is to implement the certified local coastal program, and that approval of a tentative tract map "shall constitute approval of a coastal development permit . . . in accordance with the certified LCP and the California Coastal Act of 1976."

Concerning extensions of coastal development permits for tentative tract maps, LCP ordinance 21.06.010(a) specifies that an approved or conditionally approved tentative tract map "shall expire twenty-four months after its approval." Section 21.06.010(c) further specifies that upon application of the divider, filed with the planning department prior to expiration of the tentative tract map, that the subdivision committee or planning commission "may extend or conditionally extend the time at which [the] map expires for a period or periods not exceeding a total of three years." This section also states that the planning department shall make a written recommendation concerning extension requests, although no explicit criteria for approving extensions of tentative tract map CDP's are provided in the section. There is no LCP ordinance that provides for a five-year extension of a CDP for a tentative map. In general, then, the CDP extension procedures for tentative tract maps found in Title 21 mirror the generic CDP extension procedures found in Title 23 of the LCP, which allow for no more than three one-year extensions to what is initially required to be a two-year CDP, for a total maximum CDP life of five years (see Ordinances 23.02.040 and 23.02.050).

County Action

According to the local record, the applicant requested a five-year extension of Tract 1646 in November 1997. The Planning Commission granted the applicant a three-year extension. On appeal, the Board of Supervisors granted a five-year extension for "Tract 1646 (Holland)." Although the Board's minutes do not explicitly state the five-year extension applied to the CDP as well as the tentative map, the staff recommendation provided to the Board makes reference to "Tract Map 1646/CDP" in discussing the history of the subdivision, and it must be assumed that the applicant intended to seek an extension of both the tentative map and the CDP.

LCP Consistency

To the extent that the Board intended to extend the CDP for the Holland tentative tract map, this action to extend the CDP for five years is per se inconsistent with LCP ordinance 21.06.010(c), which allows a maximum extension of three years for subdivision CDPs. There is no evidence within the local record, and no citation to provisions in the LCP, that would justify a five-year

extension of the Tract 1646 CDP. Moreover, as mentioned above, there is also no other LCP provision that would provide for a five-year extension of a CDP for a tentative map. The County made no explicit findings concerning why a five-year extension is justified as opposed to the three-year extension allowed by the LCP, beyond a general reference to the extenuating circumstances surrounding the subdivision proposal. It may be that the Board was acting under Subdivision Map Act section 66452.6(e), which provides for discretionary five-year extension of tentative tract maps. However, this section is inapplicable to the CDP for the tract, which under the LCP is limited to a maximum extension of three years.

In sum, there is no authority in the LCP to extend the CDP for the Holland tentative tract map for a period of five years. The maximum time extension for the CDP for a tentative map is three years, according to LCP section 21.06.010(c).

2. The Extension Should Be Denied Because of Changed Circumstances.

Because the Commission has taken jurisdiction over the extension and amendment of the Holland subdivision CDP, the Commission must now evaluate whether an extension of up to three years is appropriate under the LCP. As mentioned above, Title 21 of the LCP does not specify any substantive criteria for approving CDP extensions for subdivisions, although written findings are required. However, the Title 23 LCP extension provisions mirror the Coastal Act (see 14 Cal.Code Reg. § 13169) inasmuch as the planning director or the Planning Commission must make findings that there are no changed circumstances, including changes in basic service capacities available (sewer, water, roads, etc.), that would affect continuing compliance with the LCP. Inasmuch as one purpose of Title 21 is to implement the certified LCP and the California Coastal Act, the Commission finds that the appropriate standards for evaluating the appropriateness of a subdivision CDP extension are those specified in Title 23 of the LCP. Using these standards, there is at least one significant area of concern.

Environmentally Sensitive Habitat

Since the 1990 approval of the Holland subdivision, the Morro Shoulderband snail has been listed by the U.S. Fish and Wildlife Service as an endangered species (January 17, 1995). Potential habitat for the species includes the sandy soils of coastal dune scrub and coastal sage scrub of Los Osos. The presence of Shoulderband snail habitat has been a primary concern of the Commission during its review of the Los Osos wastewater treatment plant. Although no specific surveys have been completed for the Holland site by the USFWS, the Service has indicated that there is a high probability that there are snails on the site. This assessment is based on the similarities between this site and other identified snail habitat in Los Osos. In addition, a representative for the project has previously contacted USFWS about initiating a Habitat Conservation Planning process to address the fact that the site provides snail habitat. (Personal Communication, Kate Symonds, USFWS Biologist to Steve Monowitz, 8/26/99.) More significant, the Public Review Draft of the County's Estero Plan Update identifies most of the Holland site, which falls into the category of parcels greater than an acre, as "Suitable Snail Habitat." (Figure 6-3; pg. 6-17 – see Exhibit II.) In support of this mapping, the text of the document summarizes:

The County has conducted studies to identify snail habitat in Los Osos that may be developed in the future. Of 567 undeveloped parcels less than an acre in size, 172

parcels contain suitable snail habitat. Of the 86 parcels greater than an acre in size, 38 parcels contain suitable snail habitat (6-16) [emphasis in original].

Thus, the County has itself indicated that the Holland parcel is suitable snail habitat, based on resource studies of Los Osos. The likely presence of these snails, in conjunction with the USFWS listing of this species as endangered, is a significant changed circumstance with respect to coastal resources.

In order to extend the CDP for the Holland subdivision, section 23.02.050(a)(2) requires the Commission to find that there are no changed circumstances that affect how the standards of the LCP apply to the project. Here, there is a definite changed circumstance concerning environmentally sensitive habitat that was not addressed at the time of the original CDP approval. Moreover, the LCP contains numerous policies that require the protection of sensitive habitat, including the following:

Policy 1: Land Uses Within or Adjacent to Environmentally Sensitive Habitats

New development within or adjacent to locations of environmentally sensitive habitats (within 100 feet unless sites further removed would significantly disrupt the habitat) shall not significantly disrupt the resource. Within an existing resource, only those uses dependent on such resources shall be allowed within the area.

Policy 2: Permit requirement

As a condition of permit approval, the applicant is required to demonstrate that there will be no significant impact on sensitive habitats and that proposed development or activities will be consistent with the biological continuance of the habitat. This shall include an evaluation of the site prepared by a qualified professional which provides: a) the maximum feasible mitigation measures (where appropriate), and b) a program for monitoring and evaluating the effectiveness of mitigation measures where appropriate

Policy 4: No Land Divisions in Association with Environmentally Sensitive Habitats

No divisions of parcels having environmentally sensitive habitats within them shall be permitted unless it can be found that the buildable area(s) are entirely outside the minimum standard setback required for that habitat (100 feet for wetlands, 50 feet for urban streams, 100 feet for rural streams). These building areas (building envelopes) shall be recorded on the subdivision or parcel map.

Each of these policies have corresponding ordinances to implement the protection of sensitive habitats. In light of the significance of the changed circumstances with respect to the endangered shoulderband snail, it is clear that questions are raised concerning the consistency of the Holland subdivision with the certified LCP. This is particular true concerning Policy 4, which prohibits subdivisions that contain environmentally sensitive habitat. Therefore, the Commission concludes that findings necessary to extend the coastal development permit for Tract 1646 can not be made, and that the permit is thus not extended.

Adequate Water Supply

As discussed in the water findings, there is no question that the availability of water for the project has deteriorated since the 1990 LCP evaluation of the subdivision. The overdraft situation in the Los Osos groundwater basin has not improved. There is also remains considerable uncertainty concerning the sustainable yield of the groundwater basin. It cannot reasonably be asserted that there is currently sufficient water to serve an additional 100 residential units. Nonetheless, because the original approval of the subdivision CDP was conditioned to required a showing of adequate water before the Final map could be filed, the uncertainty in future water availability has been taken into account.

3. The Expiration Date of the Permit

The question that remains is whether the permit has now expired. The CDP for the subdivision was valid until at least June 14, 1998, which is the date that the two year life of the CDP would have ended following the expiration of the five-year moratorium extension that was granted by the County in 1993. Although the applicant's request for extension tolls the expiration of the permit until the request for an extension is decided, the Commission's decision to deny the permit extension means that the permit has now expired, and the applicant must reapply to the County for a new permit for the proposed subdivision.

The County's findings suggest that two state legislative automatic extensions of all tentative tract maps (2 years in 1993, and 1 year in 1996) add an additional three years to the life of tract map which, if true, would have extended the life of the permit until June 2001 (with the five-year extension of the tract map this would extend the map until June of 2006). This may be the case for the tentative tract map, but according to the relevant sections of the Subdivision Map Act, these legislative extensions extended only tentative subdivision maps and any other "legislative, administrative, or other approval by any agency of the State of California" that pertains to development included in the map (Govt. Code 66452.11(c); 66452.13(c)). As Daniel Curtin and Robert Merritt explain, "Cities or counties are not agencies of the state, and related approvals issued by them are not extended." Thus, to the extent that the County's action purported to extend the permit an additional three years by its interpretation of the Map Act, the County's action was ineffective once the Commission accepted this appeal.

4. Conclusion

After reviewing the San Luis Obispo County LCP, the action of the Board of the Supervisors concerning the extension of the Holland subdivision CDP, and the current resource circumstances of the subdivision, the Commission finds: (1) the County approval of a five-year extension of Holland CDP is inconsistent with the certified LCP, which only allows for a maximum three-year extension of CDPs for subdivision tract maps (total allowable CDP life of five years); (2) there is no basis in the County record for approving more than a three-year extension of the Holland tentative tract map CDP; (3) the appropriate standards for evaluating whether to grant a subdivision CDP extension are those specified in Title 23 of the LCP namely, whether there are changed circumstances that would affect continuing compliance with the LCP; (4) that there are changed circumstances related to the U.S. Fish and Wildlife Service listing of the Morro Shoulderband Snail as an endangered species that raise serious concerns about the proposed subdivision's compliance

with the Environmentally Sensitive Habitat policies of the LCP; (5) that therefore the CDP for the Holland subdivision tract map cannot be extended; and (6) that, upon expiration of the permit, any future development proposals for the Holland site require a new coastal development permit from the County.

D. COASTAL DEVELOPMENT PERMIT AMENDMENTS

Initially, there is a question whether the action taken by the County in August and September 1998 constituted amendments to the applicant's CDP for the subdivision. The record shows that the action taken by the County constituted permit amendments, regardless of how the County characterized its actions.

1. The County's Action Constituted the Approval of Amendments to the Original Permit

On September 28, 1998, the San Luis Obispo Board of Supervisors extended the permits for this project for an additional five years and approved five changes to the terms of the original project. Three of the changes dealt with reductions in various fees that were originally required for the project. With the exception of a potential deletion of the sewer assessment for the site, these reductions do not appear to present LCP issues, and have not been appealed. A chart and county staff report describing these changes is attached as Exhibit 3. The Board of Supervisors characterized their action as an "interpretation" of the conditions originally approved as part of Tract 1646. The Board's action, however, resulted in substantive revisions to critical components of the subdivision approval and thus effectively amended the coastal development permit. A review of the substantive effect of the Board's action demonstrates that the revisions made to Conditions 1 and 2 of Tract 1646 in September go far beyond the insignificant adjustments that could be defined as interpretive guidance.

First, Condition 1 was originally approved as follows:

The project shall connect to a community wide sewer system approved by the Regional Water Quality Control Board. The applicant shall not file the Final Map unless and until a community wide sewer system has been constructed and is available for the project to connect to.

The Board revised this condition by qualifying that, "this condition can be met with either the Los Osos Community sewer project or some other project which meets the definition of community wide". The Board did not define the type of project, other than the current Los Osos Community sewer project, that would meet the requirements of a "community wide" project. The applicant, however, was clear that he was asking the Board to allow him to implement an alternative sewer project for his subdivision only, so that he could have the option of filing the final map before the Los Osos Community sewer facilities were approved or in place. (Please see Exhibit 4, Minutes of the August 25 and September 22, 1998 Board Hearings on this item.) The Board minutes reflect agreement with the applicant's position. (Applicant's representatives have since indicated to staff that a package plant for the subdivision would be used on an interim basis, until the community sewer system was available to serve the site.)

The appellants challenged the Board's characterization of this action to revise the terms of the project as an "interpretation." They contended that it was effectively an amendment to a condition of the original permit based on the LCP's provisions for authorizing changes to projects. Title 21 of the LCP does not address amendments to subdivision CDPs, but Title 23, regardless of whether it is binding in this situation, provides useful guidance as to the types of changes to a project that will trigger the need for an amendment to a permit. (Title 23, San Luis Obispo Coastal Zone Land Use Ordinance, Section 23.02.038 et seq.) These are summarized as follows:

1. The change relates to a project feature that was specifically addressed in the conditions of approval.
2. The change was a specific consideration by the review authority (in this case the Board of Supervisors) in the approval of the original project.

The recent Board action to revise Condition 1 of Tract 1646 meets both of these criteria. The method of sewerage the project was specifically addressed by Condition 1 and was of particular concern to the Board as reflected in the Minutes of the December 11, 1990 hearing on this item. The on-site sewage treatment facilities originally proposed as part of the subdivision were specifically deleted from the project by the applicant in November 1990 in response to concerns expressed by the planning department. Although the Board in 1998 authorized the development of on-site waste water treatment facilities by permitting the amendment, the applicant did not provide construction plans or describe the size or location of proposed facilities for the Board's consideration.

The same issue is raised by the Board's action with regard to Condition 2. The provision of a domestic water supply was a significant issue when the Board discussed the original project in 1990 and Condition 2 was specifically developed to address their concern regarding water supply. The original provisions of Condition 2 are as follows:

Prior to the filing of the Final Map, the Applicant will be required to demonstrate an adequate water supply consistent with the County policies in effect at the time the Final Map is filed. (emphasis added)

In response to the applicant's request, the Board amended this condition to accept an existing 1988 "will serve" letter from the Southern California Water Company as an adequate demonstration of water availability for the filing of the Final map whenever that may be in the future. The "will serve" letter is quite brief and does not specify how long the company has committed to reserve connections for the project. (Please see Exhibit 5.) Therefore, a revision which allows reliance on an increasingly dated "will serve" letter is a substantial change from the original, prospective, condition which required up to date water information at the time, in the future, when the final map was presented for filing.

In addition, staff has contacted Warren Morgan, the Manager for the Southern California Water Company for the San Luis Obispo and Santa Barbara area. He states that "will serve" letters are valid only for one year and the applicant would need to get an updated "will serve" letter from the company. He stated that, at present, the company would likely give the applicant a new letter that

would be valid for one year. Commitments for service beyond this one year period would have to be secured on an annual basis.

A final problem with use of the 1988 letter is that the Southern California Water Company service area does not include the Holland site. The Holland site is, according to maps in the Draft Estero Area Plan Update, in the S and T Mutual Water Company service area. Discussions with S and T staff indicate that they do not have adequate capacity to serve the proposed subdivision, but that it was perhaps possible that service could be obtained from the neighboring purveyor, Southern California Water because neighboring water districts can serve across district boundaries. As discussed earlier, Southern California Water Company representatives have indicated that a new “will serve” letter may be issued.

The proposed change to Condition 2 also requires an amendment because the timing of the demonstration of water availability was specifically addressed by Condition 2 and was a specific concern of the Board of Supervisors as reflected in the minutes of the hearing on this item in 1990. For these reasons, the Commission finds that the Board’s action constituted the approval of amendments to the conditions of the CDP, and is reviewable by the Commission on this appeal.

2. The Request to Amend the Original Permit Conditions Must Be Denied

Condition 1, Sewage Treatment Facilities

The County’s action to amend the original permit conditions regarding sewer and water service is inconsistent with Public Works Policy 1 of the certified Land Use Element of the San Luis Obispo County LCP. This policy requires that new development demonstrate the following:

“there are sufficient services to serve the proposed development given the outstanding commitment to existing lots within the urban service line for which services will be needed consistent with the Resource Management System where applicable”.

The conditions attached to the original project ensured that this policy would be met by requiring that before the final map could be recorded, and development that would require these services could proceed, a community wide sewer facility would be in operation. (Please see Exhibit 6, Conditions of Approval, 1990.)

The amendments to the project approved by the County in September 1998 allow the applicant to file the final map on the basis of an alternative sewer treatment system to serve his proposed subdivision only. No plans for such a system (i.e. site plan, type of facility, elevation), however, were included with the applicant’s requested amendment. The action of the Board is somewhat confusing because the minutes of the September 1998 meeting clearly state that the Board agreed with the applicant’s proposition—to allow an alternative system for his subdivision only—but qualified the amendment by stating that the alternative would be “community wide.” No definition of “community wide” was offered and based on the Board’s agreement with the applicant’s well-articulated position, the effect of the amendment is to allow the applicant to develop a “package” sewer plant on his site to serve the 100-lot subdivision only and thus, not a system that would serve

greater Los Osos. (Please See Exhibit 3, County Staff Reports.)

The Regional Water Quality Control Board has long been concerned about the impacts of individual and small package plants being used to treat wastewater in the Los Osos area because of the documented high levels of ground water contamination that continues to occur as a result. These problems are discussed in great detail in the staff report and supporting material developed as part of the Commission's continuing consideration of the Los Osos Wastewater Treatment Facilities appeal, A-3-SLO-97-40.

To briefly recap the current situation, the site of the subdivision is located in the "prohibition area" designated by the Regional Water Quality Control Board as an area where any additional septic systems are inappropriate. The area has also been under a moratorium on new sources of sewage discharge imposed by the Regional Water Quality Control Board since January 8, 1988. The effect of the moratorium is to preclude the installation and operation of any new or expanded sewage treatment systems that would degrade water quality either individually or cumulatively within the prohibition area unless an exception is granted by the RWQCB. During the eleven years the moratorium has been in effect, one exception has been granted by the RWQCB and, according to Board staff, this alternative system has not proved entirely successful. No new "package" sewage treatment plants to serve multi-unit projects have been approved since the imposition of the moratorium although a replacement plant was allowed to alleviate the discharge from the Sea Pines Golf Course and serve the Monarch Grove development. RWQCB staff state that any new "package" plants will be reviewed by the Board both for their ability to avoid any degradation of water quality and their effect of the ability of the community to continue to make progress on developing a truly community-wide wastewater treatment facility. Given this situation, it is obvious that adequate sewer facilities to serve the proposed subdivision do not exist and will not likely be available until a community-wide wastewater treatment facility for the community of Los Osos that complies with the RWQCB's requirements is constructed and operating.

Over the last few years, San Luis Obispo County and the Regional Board have been actively pursuing a permit for the construction of a sewage treatment facility to serve the area of Los Osos located within the "prohibition area." Realization of this community-wide sewage treatment facility, or one similar to it, will provide adequate sewage treatment facilities for not only this project but for the remainder of Los Osos, thus allowing compliance with LCP Public Works Policy 1. As discussed in the preceding paragraph, it is problematic at best if an alternative to the currently proposed Los Osos Wastewater Treatment Facility that would serve just this project could comply with the Regional Board's policy in this area. It is also unclear what effect the cumulative impact of exceptions to the Board's ruling could have on efforts to construct the needed community facility.

For all of these reasons, the applicant's request to modify the original condition significantly weakens the intent of the original condition and does not ensure that adequate sewer facilities will exist to serve the new development as required by LCP Public Works Policy 1. The requested amendment is therefore denied.

Condition 2, Water Service

The same issue of consistency with LCP Public Works Policy 1 arises because of the amendment to Condition 2. This condition contains the following provisions:

Condition 2. Prior to filing the Final Map, the applicant will be required to demonstrate an adequate water supply consistent with the County policies in effect at the time the Final Map is filed.

The amendment allows the map to be filed and county policy to be met anytime in the future based on a 1988 “will serve” letter. This “will serve” letter, as discussed on page ____ of this report, is no longer valid according to representatives of the water company. As originally written, Condition 2 was consistent with Public Works Policy 1 because it required an assessment of water availability at the time of filing of the final map. This would ensure that water service, consistent with the LCP policy, was available to serve the new parcels at the time when they could be sold and developed with residences that would need a water supply. The recent amendment is inconsistent because it assumes water will always be available to this project due to the old “will serve” letter no matter how circumstances or policies may have changed since 1988 or will continue to change before the final map for this subdivision is presented for filing. As discussed in the following paragraphs, changes in water availability have already occurred over the last nine years since this project was approved. The Commission notes that, notwithstanding the 1988 “will serve” letter, the adequacy of water was a central factor in the decision of the San Luis Obispo Subdivision Review Board denial of the project in 1990 and was a major issue in the staff recommendation on the 1991 appeal of this project that was never heard by the Commission.

Currently, there appears to be inadequate water supply for any new development in the Los Osos area. The Los Osos groundwater basin, on which all development in this area relies, is severely overdrafted as described in the certified Estero Area Plan (adopted in 1988) which states:

Net urban demand added to net agricultural demand has already exceeded the lower safe yield of 1300 AFY cited in the Brown and Caldwell study. The maximum safe yield of 1800 AFY will be attained when the population reaches 12,600 assuming only modest increases in agricultural uses. Continued irrigation is realistic since Coastal Act policies require protection of agricultural uses.

The 1990 County staff report prepared for the Subdivision Review Board hearing on this project also expressed a concern regarding water availability for new development by stating that adequate water services were not insured for the project at that time for the following reason:

The evidence presented in the study prepared by the State of California Department of Water Resource’ study entitled “ Geohydrology and Management of Los Osos Valley Ground Water Basin, San Luis Obispo “ which establishes that the water supply in the water basin from which this project would draw is limited without a community sewer system to increase recharge in the basin and will not be sufficient to serve additional residences which will result from the subdivision of this site. (County Staff Report, dated November 14, 1990.)

The water limitations and constraints identified in the Estero Area Plan and in the 1990 County staff report have not lessened over the intervening years. The Community Wastewater Treatment Facility planned to recharge the basin has yet to be constructed, no outside water sources have been tapped and additional development has claimed increments of the existing supply. The population has grown since 1990. According to the most current population figures for the area given in the Draft Estero Area Plan, the population of urban Los Osos is 14,568. It thus appears that the safe yield figures given in the currently certified Estero Plan (dated 1988) have been exceeded and, if coastal resources are to be protected consistent with the policies of the certified LCP, the Commission cannot find that there is an adequate water supply for new development at this time.

Future water availability is even less certain. The Draft Estero Area Plan (1999) includes an updated discussion of water supply for Los Osos which concludes that there is an existing overdraft of approximately 1,250 acre feet a year based on a safe yield figure of 2,200 acre feet a year for the basin. The report notes, however, “that DWR’s [Department of Water Resources] estimate of the long term sustainable yield of the Los Osos groundwater basin is being questioned, and further study is needed to arrive at a more definitive figure”.

The Estero Area Plan Update also states that “the estimate of future supply remains uncertain.” Thus, reliance on an invalid 1988 “will serve” letter to allow the recordation of a final map for a 100-lot subdivision is inconsistent with LCP Public Works Policy No. 1 and the applicant’s requested modification of this condition must be denied.

E. California Environmental Quality Act (CEQA)

Section 13096 of the California Code of Regulations requires that a specific finding be made in conjunction with coastal development permit applications showing the application to be consistent with any applicable requirements of CEQA. Section 21080.5(d)(2)(A) of CEQA prohibits a proposed development from being approved if there are feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse effect which the activity may have on the environment. The Coastal Commission’s review and analysis of land use proposals has been certified by the Secretary of Resources as being the functional equivalent of environmental review under CEQA. As discussed herein, the County’s extension and amendment of the coastal development permit for the Holland tentative tract map cannot be approved because there are feasible, less environmentally-damaging alternatives.